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Sheila

From: Kristin Mayes
Sent: Monday, May 04, 2009 1:31 PM
To: Sheila Stoeller
Subject: FW: ICR Water Users Association

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From: Jerome Reid [mailto:wmunny@cableone.net]
Sent: Thursday, April 30, 2009 5:15 PM
To: Kristin Mayes
Subject: ICR Water Users Association

Commissioner Mayes:

I understand from conversation with my neighbors Jimmy & Chris Stoner that there was an oversight in the Open Hearing on Tuesday resulting in no "Public Comment". I was one of those in attendance interested in making comments, which I have set forth below. In addition to the prepared comments below, I have the following observations about what transpired in the Open Hearing on this rate case.

The legal representatives for Talking Rock Golf Club (TRGC), ICR Water Users Association (ICRWUA), and Mr. Krumwiede made several representations about a 25MM gallon lake planned for Talking Rock Ranch. The Water Services Agreement agreed to by the Parties stated that this lake would be completed by May 31, 2009, but a letter from Mr. Krumwiede stated that the actual date for completion would be December 31, 2009 for various reasons. I was disappointed that none of the Commissioners asked any questions regarding steps that TRGC had taken in preparation for completing this project. Calls to the Yavapai County department that would issue them said they had no record of any applications for or issuance of any permit to build such a lake at Talking Rock Ranch. This would cause me to question the veracity and purpose of the claims made regarding the lake by Messrs. Crockett, Shapiro, and Krumwiede.

* * *

April 28, 2009

Good morning Madam Chairman and Commissioners,

My name is Jerome Reid. My wife & I have lived in Inscription Canyon Ranch for almost 5 years now at 13755 N. Standing Bear Trail. I have been attending ICR Water Users Assn. Board Meetings and Annual Meetings of Shareholders since 2004. I have taken a keen interest in this rate case because the Water Company Board has been captured by Harvard Investments, the developer of TRR, and has been making decisions that are clearly NOT in the best interests of ALL the residents in the service area. As a simple example of this claim, I would tell you that this Board has driven the Company into its current state of insolvency by expending or committing to expend excessive amounts for lawyers and accountants in an effort to avoid compliance with Commission Order 64360.

I have long been a student of government and in the course of my formal education, I have earned a graduate degree in accounting & taxation, a law degree, and a Master of Laws degree in taxation. We are all aware that one of the principles upon which our civil society is based is the concept that ours is "a government of laws, not men", distinguishing ours from those governments that rely on royalty or rule by decree. I have learned that the Achilles heel of our "rule of law" model is "compliance", whether through timely direction regarding what constitutes compliance under a new law or legal regime or enforcing sanctions to achieve compliance by those covered under any particular law or regulation. The rate case involving ICR Water Users Association ("ICRWUA" or "the Company") is a textbook case of non-compliance with an Order of the Arizona Corporation Commission ("ACC").

First, I would like to express the opinion that there are some material weaknesses in the Recommended Opinion & Order ("ROO"). For example, ROO Finding of Fact ("FoF") #58 states that "Staff *projects* that ICR *could have* approximately 575 customers by December 2010." (Emphasis added.) I do not understand why the Staff feels qualified or compelled to *speculate* on how many residents may be customers in the service area by the end of 2010. The developer of Talking Rock Ranch ("TRR") originally projected complete build out in 10 years; they were sadly mistaken. I have spoken with experienced real estate agents familiar with the TRR situation and none would make the "projection" made by the Staff. Of course, the Staff's "projection" is qualified by "could have". In that case, it is mere speculation and does not belong in "Findings of Fact". If this is indeed a "fact" that is relevant to the issues in this rate case, the Staff should be required to describe how it is relevant and the basis upon which their "projection" is made. I would also be interested in whether the Staff incorporated into their "projection" the fact that TRR has resorted to online auctions of properties in an effort to make their development financially viable. Secondly, TRR claims, and the ROO states it as a FoF, that TRGC is subsidizing water rates for the residents in the service area based on a cost of service study ("COSS") performed by Mr. Bourassa. Interestingly, Mr. Bourassa has never met with interested water company customers to review his COSS, including all the underlying assumptions, that purportedly supports that claim. These claims are simply accepted as fact (ROO page 22, FoF #65), even though the COSS has not been critically reviewed by anyone other than those devoted to the TRR developer's interests. In fact, several residents of the service area requested an opportunity to meet with Mr. Bourassa and discuss the COSS, the underlying assumptions, and his methodology. The TRR-controlled Board of Directors refused to make Mr. Bourassa available for such a discussion.

Returning to the issue of compliance, ICRWUA and Talking Rock Ranch presented a Main Extension Agreement ("MXA") for approval in the last proceeding before the ACC (DOCKET NO. W-02824A-01-0450) in 2001. Pursuant to the terms of the MXA, ICRWUA's service area would increase to include the ~3000 acres that is TRR and the completely separate and distinct water delivery system on the east side of Williamson Valley Rd. across from Inscription Canyon Ranch ("ICR"), Whispering Canyon ("WC"), and the Preserve at the Ranch ("PR"). At the end of that proceeding, the Commission issued Order 64360 approving the MXA *subject to two conditions subsequent*. One of those conditions subsequent was that all customers within the expanded CC&N would

pay the single tariff rate for water (FoF #30). The second condition subsequent required TRR to document within 365 days that it had transferred to ICRWUA "...the wells which it has drilled for the purpose of providing water to the extension area described in Exhibit A to ensure that the utility has adequate water for its customers and to ensure that they are not subject to relying for their water on a third party over which the Commission lacks jurisdiction." (Emphasis added.) This second condition subsequent was intended to address the concern of Judge Stern and the Commission that ICRWUA own or control the water resources it would have to rely on to provide water utility service to the expanded service area. And the language of the Order does not say "the wells it has drilled for the purpose of providing water only to *customers in* the extension area".

However, it is clear, and the ROO's findings support this, that ICRWUA did not comply with the conditions, i.e., charge all customers a single tariff rate and transfer Wells #1 & #2 to ICRWUA within 365 days of the Order. The Order clearly states "...the approval granted herein to ICR Water Users Association, Inc. shall be conditioned upon ICR Water Users Association, Inc. complying with the conditions as set forth in Findings of Fact Nos. 30, 31, 34 and 35 and Conclusion of Law No. 6_hereinabove **or the approval granted herein shall be rendered null and void without further Order of the Commission**." (Emphasis added.) This raises the following question: why are we even having a rate case for a CC&N that includes Talking Rock Ranch? The MXA became void when ICRWUA and Harvard failed to meet the conditions!

The ROO docketed in this case recognizes, as did Judge Stern during the hearings in December 2008, that TRR had failed to comply with the second condition subsequent, i.e., it did not transfer to ICRWUA Wells #1 and #2 within the 365 days after the date of Order 64360. Application of basic logic and common sense would lead one to conclude that on the 366th day after Order 64360 the MXA became null and void. And I encourage you in considering the ROO to reflect on the fact that TRR has failed to comply to this date with Order 64360 and has thumbed its nose at the Commission and its statutory authority. It has thumbed its nose at the ACC and its authority by actively working to circumvent Order 64360, for example, by entering into the "Well Agreement" with the Company. The recently docketed ROO requires TRR to transfer Well #1 to ICRWUA. History suggests that this will not happen. TRR was ordered to do so once before and it failed to do so. Now, it has concocted a "Water Services Agreement" pursuant to which it will transfer Well #1 to the Company, not pursuant to the Commissions Order 64360. How do you as Commissioners believe your authority will be respected if you allow a developer to simply thumb its nose at your Orders and enter agreements that constitute blatant efforts to circumvent the ACC's authority?

On a related issue, the ROO takes "official notice" of the American Water Works Association's definition of wheeling as the transportation by a water supplier through its system of water not owned or controlled by the supplier. This relates to the contention of TRGC that it is not a customer of ICRWUA and, therefore, is not required to pay tariff rates, only wheeling charges. This contention is self-serving and disingenuous on the part of TRGC and Harvard. The ROO finds that Well #1 and #2 should have been transferred to ICRWUA by March 15, 2002. In light of that conclusion, ICRWUA was not wheeling TRGC's water to its golf course. Rather, ICRWUA was providing water to TRGC

for its golf course and should have charged tariff rates for that water. The ROO fails to follow through on its findings and the definition of wheeling it adopts to find that TRGC was in fact a customer and owes ICRWUA millions of dollars for the water provided to TRGC by ICRWUA from Wells #1 & #2 (for example, assume 800K gallons/year were pumped to TRGC from Wells #1 and #2 for each of the last 6 years, this would produce a payable from TRGC to the Company of ~$13.4 million). While Harvard and ICRWUA agreed that TRGC would not be a customer unless TRGC requested water service from the Company, the facts create a clear case of an implied contract for water service for which ICRWUA should be compensated.

I understand that the ACC desires to regulate fewer public service corporations rather than more. Many of the resident/owners of the ICRWUA service area have filed documents outlining ways to resolve the obvious conflict manifest in this proceeding. Recommendations included using a single company to house two separate water systems and separate tariffs. Another recommendation suggested respecting the language of Order 64360 by having ICRWUA revert to its original service area, i.e., one without Talking Rock Ranch. On the face of it, the separate company solutions would generate yet another water company (i.e., one to serve TRR) and the attendant work required of the ACC, its staff, and hearing officers. However, there is reason to believe that rate applications filed by these two separate companies, (ICRWUA and TRR Water Users Assn. back in July 2007, when this rate case began, would have long been concluded in a timely manner at substantially lower cost to each company than the present proceeding. The Board of ICRWUA, long controlled by TRR-biased Directors, has spent so imprudently on lawyers and accountants that ICRWUA is insolvent.

In conclusion, TRR is apparently on the brink of bankruptcy and the resident/owners of ICR, WC, and the PR should not be saddled with a service area that is showing all the signs of a development about to be sold in bankruptcy proceedings. As Judge Stern said, why would anyone "in their right mind" want to include TRR & TRGC in the ICR service area? TRR is a gated community built around an 18 hole golf course, that uses in excess of 100 million gallons of groundwater each year. The citizens of Arizona and, specifically, of ICR, WC, and the PR, should be able to reasonably expect the Commission to identify and stop abuses of the regulatory process and require developers to acknowledge from the outset and plan around the fact that water is a very scarce commodity and becoming more scarce as time goes on.

Respectfully submitted,

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